90-923

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

BILLY LAMB and CARMON WILLIS

Petitioners,

VS.

PHILIP MORRIS, INCORPORATED,

and

B.A.T. INDUSTRIES, PLC.

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

JOHN F. LACKEY
LACKEY & LACKEY
142 North Second Street
Richmond, Kentucky 40475
Telephone (606) 623-1676
Counsel of Record for
Petitioners

APPENDIX

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APPENDIX I

RECOMMENDED FOR FULL TEXT PUBLICATION
See Sixth Circuit Rule 24

No. 89-5960

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

* * * * * * * *

BILLY LAMB AND CARMON WILLIS, Plaintiffs-Appellants,	)	ON APPEAL from the United States District Court for the Eastern District of Kentucky.
v.	)	
PHILLIP MORRIS, INC. and B.A.T. INDUSTRIES, PLC, Defendants-Appellees.	)	

* * * * * * * *

Decided and Filed September 28, 1990

* * * * * * * *

Before: KEITH and GUY, Circuit Judges; and BROWN, Senior Circuit Judge.

GUY, Circuit Judge. In this antitrust action, plaintiffs Billy Lamb and Carmon Willis appeal from the dismissal of their claims against defendants Phillip Morris, Inc. (Phillip Morris), and B.A.T. Industries, PLC (B.A.T.). Because we find that the act of state doctrine

presents no impediment to adjudication of the plaintiffs' antitrust claims, we reverse the district court's dismissal of those claims and remand them for further consideration. Since we find that no private right of action is available under the Foreign Corrupt Practices Act of 1977 (FCPA), 15 U.S.C. §§78dd-1, 77dd-2, we affirm the dismissal of the plaintiffs' FCPA claim.

I.

In accordance with Kerasotes Michigan Theatres, Inc. v. National Amusements, Inc., 854 F.2d 135 (6th Cir. 1988), we must accept as true all factual allegations in the complaint when reviewing the granting of a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss. Id. at 136. Moreover, dismissal under Rule 12(b)(6) is appropriate only "if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); accord Morgan v.

Church's Fried Chicken, 829 F.2d 10, 12 (6th Cir. 1987). Therefore, we shall set forth the facts as alleged in the plaintiffs' complaint.

Plaintiffs Lamb and Willis, along with various other Kentucky growers,[1] produce burley tobacco for use in cigarettes and other tobacco products. Defendants Phillip Morris and B.A.T. routinely purchase such tobacco not only from Kentucky markets serviced by the plaintiffs, but also from producers in several foreign countries. Thus, tobacco grown in Kentucky competes directly with tobacco grown abroad,

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[1]The plaintiffs' complaint requests certification under Federal Rule of Civil Procedure 23 of a class encompassing "all persons who sold burley tobacco grown within the counties of Scott, Madison, Jessamine, Bourbon, Fayette, Mercer, Clark, and Woodford in the State of Kentucky, who consummated such sales of burley tobacco within the past six (6) years." As the district court observed in dismissing the complaint, however, the plaintiffs never moved for class certification.

and any purchases from foreign suppliers necessarily reduce the defendants' purchase of domestic tobacco.

On May 14, 1982, a Phillip Morris subsidiary known as C.A. Tabacalera National and a B.A.T. subsidiary known as C.A. Cigarrera Bigott, SUCS. entered into a contract with La Fundacion Del Nino (the Children's Foundation) of Caracas, Venezuela. The agreement was signed on behalf of the Children's Foundation by the organization's president, the wife of the then President of Venezuela. Under the terms of the agreement, the two subsidiaries were to make periodic donations to the Children's Foundation totalling approximately $12.5 million dollars. In exchange, the subsidiaries were to obtain price controls on Venezuelan tobacco, elimination of controls on retail cigarette prices in Venezuela, tax deductions for the donations, and assurances that existing tax rates applicable to tobacco companies would not be

increased. According to the plaintiffs' complaint, the defendants have arranged similar contracts in Argentina, Brazil, Costa Rica, Mexico, and Nicaragua.

In the plaintiffs' view, the donations promised by the defendants' subsidiaries amount to unlawful inducements designed and intended to restrain trade. The plaintiffs assert that such arrangements result in artificial depression of tobacco prices to the detriment of domestic tobacco growers, while ensuring lucrative retail prices for tobacco products sold abroad. In this action, the plaintiffs seek redress in the forms of treble damages and injunctive relief principally for the former result - reduction in domestic tobacco prices.

The plaintiffs filed their complaint alleging violations of federal antitrust laws on August 21, 1985, in the United States District Court for the Eastern District of Kentucky. Both

defendants promptly moved for dismissal on several grounds. The plaintiffs then sought leave to amend their complaint to add a claim under the FCPA. On June 28, 1989, the district court dismissed the plaintiffs' antitrust claims as barred by the act of state doctrine, and dismissed the FCPA claim as an impermissible private action. This appeal followed.

The plaintiffs contend that the district court erroneously abdicated its authority to consider the antitrust claims asserted in the complaint by invoking the act of state doctrine. The plaintiffs further assert that the district court erred in prohibiting them from pursuing a private cause of action under the FCPA. We shall address these two issues individually. Our review of the district court's ruling on the defendants' Rule 12(b)(6) motion is de novo. See, e.g., Peck v. General Motors Corp., 894 F.2d 844, 846 (6th Cir. 1990).

II.

"The act of state doctrine in its traditional formulation precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory."[2] Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 401 (1964). As the Supreme Court explained in Underhill v. Hernandez, 168 U.S. 250 (1897), this concept is based on the notion that "[e]very sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Id. at 252; see

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[2]The Second Circuit has stated that "[s]uch an inquiry is foreclosed...regardless of whether the foreign government is named as a party to the suit or whether the validity of its actions are directly challenged in the pleadings." O.N.E. Shipping Ltd. v. Flota Mercante Grancolombiana, S.A., 830 F.2d 449, 452 (2d Cir. 1987). cert. denied, 109 S. Ct. 303 (1988).

also Oetjen v. Central Leather Co., 246 U.S. 297, 303 (1918)(reaffirming Underhill). The evolution of the act of state doctrine has revealed that it is not "compelled either by the inherent nature of sovereign authority ... or by some principle of international law." Sabbatine, 376 U.S. at 421. Although the test of the Constitution similarly "does not require the act of state doctrine," id. at 423, the doctrine has "'constitutional' underpinnings ...aris[ing] out of the basic relationships between branches of government in a system of separation of powers" and based upon "the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder" the conduct of foreign affairs. Id.; see also W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp., Int'l, 110 S. Ct. 701, 704 (1990). In this respect, "[t]he act of state doctrine is not a jurisdictional limit on

courts, but rather is 'a prudential doctrine designed to avoid judicial action in sensitive areas.'"[3] Liu v. Republic of China, 892 F.2d 1419, 1431 (9th Cir. 1989); accord Riedel v. Bancam, S.A., 792 F.2d 587, 592 (6th Cir. 1986).

Although the act of state doctrine typically involves an assessment of "the likely impact on international relations that would result from judicial consideration of the foreign sovereign's act," Allied Bank Int'l v. Banco Credito Agricola de Cartago, 757 F.2d 516, 520-21 (2d Cir.), cert. disissed, 473 U.S. 934 (1985), we must initially determine whether the defendants in this case have established

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[3]Because the act of state doctrine imposes no limitations upon the jurisdiction of the federal courts, "[a] motion to dismiss based on the act of state doctrine raises...a Rule 12(b)(6) objection, not a jurisdictional defect." Timberlane Lumber Co. v. Bank of America, N.T. & S.A., 549 F.2d 597, 602 (9th Cir. 1976).

the factual predicate for application of the act of state doctrine.[4] While act of state analysis is not generally guided by "an inflexible and all-encompassing rule," see Sabbatino, 376 U.S. at 428, the Supreme Court recently indicated that, as a threshold matter, "[a]ct of state issues only arise when a court must decide - that is, when the outcome of the case turns upon - the effect of official action by a foreign sovereign." Kirkpatrick, 110 S.Ct. at 705 (emphasis omitted). Here, the defendants have failed to make such a showing.

The defendants view Justice Holmes' discussion of the act of state doctrine in American Banana Co. v. United Fruit Co., 213 U.S. 347, 357-58 (1909), as supportive of their position that

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[4] "The party moving for the [act of state] doctrine's application has the burden of proving that dismissal is an appropriate response to the circumstances presented in the case." Environmental Tectonics v. W.S. Kirkpatrick, Inc., 847 F.2d 1052, 1058 (3d Cir. 1988), aff'd, 110 S.Ct. 701 (1990).

the doctrine may be applied if a legal claim impugns the motivations of a foreign state. See also Clayco Petroleum Corp. v. Occidental Petroleum Corp., 712 F.2d 404, 407-08 (9th Cir. 1983), cert. denied, 464 U.S. 1040 (1984); Hunt v. Mobil Oil Corp., 550 F.2d 68, 77 (2d Cir. 1977). However, the Supreme Court's recent decision in Kirkpatrick - a case involving civil RICO and Robinson-Patman Act claims relating to a New Jersey corporation's bribery of Nigerian officials - undercuts their contention by explicitly eschewing the logic of American Banana.[5] The Court explained in

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[5] In the Kirkpatrick Court's estimation, "American Banana was squarely decided on the ground (later substantially overruled) that the antitrust laws had no extraterritorial application," 110 S.Ct. at 705-06 (citation omitted), and any act of state discussion in American Banana was nothing more than dictum subsequently "overcome" by United States v. Sisal Sales Corp. 274 U.S. 268 (1927). See Kirkpatrick, 110 S.Ct. at 706. The Kirkpatrick Court, in fact, cited Sisal for the proposition that, "American Banana notwithstanding, the defendant's actions in obtaining Mexico's enactment of 'discriminating legislation' could form part of the basis for suit under the United States antitrust laws." Id.

Kirkpatrick that the act of state doctrine in its present formulation "does not establish an exception for cases and controversies that may embarrass foreign governments, but merely requires that, in the process of deciding, the act of foreign sovereigns taken within their own jurisdiction shall be deemed valid." 110 S.Ct. at 707. In reaching this conclusion and permitting the plaintiffs' claims to go forward, Justice Scalia's opinion for the unanimous Court held that the act of state doctrine does not "bar[] a court in the United States from entertaining a cause of action that...require[s] imputing to foreign officials an unlawful motivation (the obtaining of bribes) in the performance of...an official act." Id. at 702. Like the bribes underlying the civil RICO and Robinson-Patman act claims in Kirkpatrick, the payments made by the defendants in this case to induce favorable action in Venezuela may support

the plaintiffs' antitrust claims.[6] Because the antitrust claims at issue in this suit merely call into question the contracting parties' motivations and the resulting anticompetitive effects of their agreement, not the validity of any foreign sovereign act, the district court erred in applying the act of state doctrine to dismiss the plaintiffs' claims. Accordingly, the order of dismissal is REVERSED insofar as the antitrust claims are concerned; the claims shall be REMANDED for further consideration.[7]

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[6]The defendants conceded at oral argument that Kirkpatrick undercut the rationale for the district court's decision with regard to the act of state doctrine.

[7]In rejecting the district court's invocation of the act of state doctrine, we do not pass judgment on whether the plaintiffs have set forth viable antitrust claims. The defendants interposed several alternative justifications for dismissal that the district cort has not yet addressed. The defendants are free to raise these arguments to support a subsequent motion for dismissal or summary judgment following remand.

III.

Although the Foreign Corrupt Practices act was enacted more than a decade ago,[8] the question of whether an implied private right of action exists under the FCPA apparently is one of first impression at the federal appellate level.[9] Thus, we must analyze the FCPA, which generally forbids issuers of registered securities and other "domestic concerns" (as well

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[8]The FCPA, initially enacted in 1977, see Pub. L. No. 95-213, §§103(a), 104, 91 Stat. 1494, 1495-98 (1977), has since been reenacted and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, §§5003(a), 5003(c), 102 Stat. 1107, 1415-24 (1988)(codified at 15 U.S.C. §§78dd-1, 78dd-2).

[9]The Ninth Circuit has applied the act of state doctrine to bar a private plaintiff's claim under the FCPA. See Clayco, 712 F.2d at 408-09. Clayco, however, offers no guidance on the issue before us. Additionally, at least one district court has referred to the issue without resolving it. See, e.g., Instituto Nacional de Comercializacion Agricola (Indeca) v. Continental Illinois Nat'l Bank and Trust Co., 576 F.Supp. 985, 990 & n.4(N.D.Ill. 1983).

as their agents) to endeavor to influence foreign officials by offering, promising, or giving "anything of value," see 15 U.S.C. §§78dd-1(a), 78dd-2(a), to ascertain whether the plaintiffs may assert a private cause of action. The Supreme Court recently explained that:

> In determining whether to infer a private cause of action from a federal statute, our focal point is Congress' intent in enacting the statute. As guides for discerning that intent, we have relied on the four factors set out in Cort v. Ash, 422 U.S. 66,78 (1975), along with other tools of statutory construction. Our focus on congressional intent does not mean that we require evidence that Members of Congress, in enacting the statute, actually had in mind the creation of a private cause of action....The intent of Congress remains the ultimate issue, however, and "unless this congressional intent can be inferred from the language of the statute, the statutory structure, or some other source, the essential predicate for implication of a private remedy simply does not exist."

Thompson v. Thompson, 484 U.S. 174, 179 (1988) (citations omitted). Thus, as Thompson makes clear, our central focus is on congressional

intent, see also Karahalios v. National Fed'n of Fed. Employees, Local 1263, 109 S.Ct. 1282, 1286 (1989), "with an eye toward" the four Cort factors: (1) whether the plaintiffs are among "the class for whose especial benefit" the statute was enacted; (2) whether the legislative history suggests congressional intent to prescribe or proscribe a private cause of action; (3) whether "implying such a remedy for the plaintiff would be 'consistent with the underlying purposes of the legislative scheme'"; and (4) whether the cause of action is "'one traditionally relegated to state law, in an area basically the concern of States, so that it would be inappropriate to infer a cause of action.'" See Chairez v. United States I.N.S., 790 F.2d 544, 546 (6th Cir. 1986) (quoting Cort, 422 U.S. at 78).

A. "Especial Beneficiaries"

The defendants contend, and we agree, that the FCPA was designed with the assistance of the

Securities and Exchange Commission (SEC) to aid federal law enforcement agencies in curbing bribes of foreign officials. According to the Senate report regarding the FCPA, the Senate Committee on Banking, Housing and Urban Affairs initially "ordered reported a bill, S.3664, which incorporated the SEC's recommendations and a direct prohibition against the payment of overseas bribes by any U.S. business concern.[10]

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[10] S.3664, which the committee did not order reported until the end of the 94th Congress in 1976, never became law. However, "[i]n the first session of the 95th Congress,...Senator Proxmire introduced an exact replica of S.3664 ...as S.305 on January 18, 1977, and the bill was again referred to the Senate Banking Committee." Lewis v. Sporck, 612 F.Supp. 1316, 1329 (N.D. Cal. 1985). On May 2, 1977, the committee reported out S.305, [which] passed the Senate on May 5, 1977." Id. at 1329-30 (citations omitted). Following a conference to resolve differences between S.305 and a corresponding House bill, both the Senate and the House passed a compromise bill in December 1977 and the President signed the compromise bill into law soon thereafter. See id. at 1330.

S.Rep.No. 114, 95th Cong., 1st Sess. 2, reprinted in 1977 U.S. Code Cong. & Admin. News 4098, 4099. As the Senate report indicates, the resulting enactment of the FCPA represents a legislative endeavor to promote confidence in international trading relationships and domestic markets; see id. at 3, 1977 U.S. Code Cong. & Admin. News at 4100-01; the authorization of stringent criminal penalties amplifies the foreign policy and law enforcement considerations underlying the FCPA. See, e.g., 15 U.S.C. §78dd-2(g). The House Conference report refers to the "jurisdictional, enforcement, and diplomatic difficulties" of broadening the FCPA's reach see H.R. Conf. Rep. No. 831, 95th Cong., 1st Sess. 14, reprinted in 1977 U.S. Code Cong. & Admin. News 4121, 4126, thereby addressing concerns typically of special interest to law enforcement officials. In light of these comments and the general tenor of the FCPA itself, which requires the Attorney

General to participate actively in encouraging and supervising compliance with the Act,[11] see, e.g., 15 U.S.C. §§78dd-1(e), 78dd-2(f), we find that the FCPA was primarily designed to protect the integrity of American foreign policy and domestic markets, rather than to prevent the use of foreign resources to reduce production costs. The plaintiffs, as competitors of foreign tobacco growers and suppliers of the defendants, cannot claim the status of intended beneficiaries of the congressional enactment under scrutiny.

B. Congressional Intent Concerning Private Rights of Action

Despite the paucity of authority in the legislative history for their position, the

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[11] The Ninth Circuit has noted that, in practice, "[t]he Justice Department and the SEC share enforcement responsibilities under the FCPA. They coordinate enforcement of the Act with the State Department, recognizing the potential foreign policy problems of these actions." Clayco, 712 F.2d at 409 (footnote omitted).

plaintiffs assert that Congress fully intended to permit private rights of action under the FCPA. We disagree. The plaintiffs have identified only one reference in a House report to a private right of action: "The committee intends that courts shall recognize a private cause of action based on this legislation, as they have in cases involving other provisions of the Securities Exchange Act, on behalf of persons who suffer injury as a result of prohibited corporate bribery." H.R. Rep. No. 640, 95th Cong., 1st sess. 10 (1977). Unlike the House, the Senate initially included a provision that expressly conferred a private right of action under the FCPA on competitors. See S.3379, 94th Cong., 2d Sess. §10, 122 Cong. Rec. 12,605, 12,607 (1976). Significantly, the Senate committee deleted that provision. See S.Rep. No. 1031, 94th Cong., 2d Sess. 13 (1976). The availability of a private right of action apparently was never resolved (or

perhaps even raised) at the conference that ultimately produced the compromise bill passed by both houses and signed into law; neither the FCPA as enacted nor the conference report mentions such a cause of action. See 15 U.S.C. §§78dd-1, 78dd-2; H.R. Conf. Rep. No. 831, 95th Cong., 1st Sess., reprinted in 1977 U.S. Code Cong. & Admin. News 4121. Because the conference report accompanying the final legislative compromise makes no mention of a private right of action, we infer that Congress intended no such result.[12] Accordingly, we

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[12] In this regard, we reject the suggestion in Jacobs v. Pabst Brewing Co., 549 F.Supp. 1050, 1062 (D.Del. 1982), that the comment in the House report suggesting the existence of a private right of action trumps contrary statements by two conferees, thereby giving rise to a private cause of action. This sort of reasoning illustrates the problematic nature of divining the true purpose of a conference committee by delving into reports on bills that were discussed at length and modified in conference.

Accordingly, we reject the plaintiffs' assertion that one isolated comment in an earlier House report mandates recognition of a private right of action.[13]

C. Consistency with the Legislative Scheme

Recognition of the plaintiffs' proposed private right of action, in our view, would directly contravene the carefully tailored FCPA scheme presently in place. Congress recently expanded the Attorney General's responsibilities to include facilitating compliance with the FCPA. See 15 U.S.C. §§78dd-1(e), 78dd-2(f). Specifically, the Attorney General must "establish a procedure to provide responses to specific inquiries" by issuers of securities and other domestic

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[13]Speaking only for myself, if writing on a clean slate, I would never infer a private right of action where the legislation itself is silent in that regard. If the courts stopped filling these legislative gaps, Congress would soon stop leaving this question unresolved.

concerns regarding "conformance of their conduct with the Department of Justice's [FCPA] enforcement policy...." 15 U.S.C. §§78dd-1(e)(1), 78dd-2(f)(1). Moreover, the Attorney General must furnish "timely guidance concerning the Department of Justice's [FCPA] enforcement policy...to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to [FCPA] provisions." 15 U.S.C. §§78dd-1(e)(4), 78dd-2(f)(4). Because this legislative action clearly evinces a preference for compliance in lieu of prosecution, the introduction of private plaintiffs interested solely in post-violation enforcement, rather than pre-violation compliance, most assuredly would hinder congressional efforts to protect companies and their employees concerned about FCPA liability.

D. Alternative Avenues of Redress

Regulation of bribery directed at foreign officials cannot be characterized as a matter

traditionally relegated to state control. In this respect, implying a private right of action under the FCPA - a statutory scheme aimed at activities ordinarily undertaken abroad - would not intrude upon matters of state concern. Nevertheless, the international reach of federal antitrust laws dilutes the plaintiffs' assertion that a private cause of action under the FCPA constitutes the only viable mechanism for redressing anticompetitive behavior on a global scale. See Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 704 (1962); see also Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 582 n.6 (1986) ("The Sherman Act does reach conduct outside our borders, but only when the conduct has an effect on American commerce."). Because the potential for recovery under federal antitrust laws in this case belies the plaintiffs' contention that an implied private right of action under the FCPA

is imperative, we attach no significance to the absence of state laws proscribing bribery of foreign officials. More importantly, since none of the Cort factors supports the plaintiffs' private right of action theory, we AFFIRM the district court's dismissal of the FCPA claim.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

APPENDIX II

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

CIVIL ACTION NO. 85-340

BILLY LAMB, ET AL., PLAINTIFFS,

VS. ORDER AND JUDGMENT

PHILLIP MORRIS, INC., ET AL., DEFENDANTS.

* * * * * * * *

In accordance with the Memorandum Opinion entered on the same date herewith,

IT IS HEREBY ORDERED AND ADJUDGED, as follows:

1. The motion of defendant Phillip Morris, Ind., to dismiss this action under FRCivP 12(b)(1) and (6) is GRANTED.

2. The motion of defendant B.A.T. Industres, PLC, to dismiss this action under FRCivP 12(b)(1), (2) and (6) is GRANTED.

3. This action is barred by the act of state doctrine and the Foreign Corrupt Practices Act of 1977.

4. Plaintiffs shall have NO RECOVERY from the defendants.

5. This action is DISMISSED and STRICKEN from the docket.

6. There being no just reason for delay, this is a FINAL and APPEALABLE Order and Judgment.

This 28th day of June, 1989.

SCOTT REED, SENIOR JUDGE

Copies to:
John F. Lackey
Robert M. Watt, III
Abe Krash
James Park, Jr.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

CIVIL ACTION NO. 85-340

BILLY LAMB, ET AL., ETC., PLAINTIFFS,

VS. MEMORANDUM OPINION

PHILLIP MORRIS, INC., ET AL., DEFENDANTS.

* * * * * * * * * *

I. INTRODUCTION

Plaintiffs, three purported tobacco growers in the Eastern District of Kentucky, bring this antitrust action under the Sherman Antitrust Act, as amended (15 U.S.C. §1, et seq.), the Clayton act, as amended (15 U.S.C. §12, et seq.), and the Robinson-Patman Act, as amended (15 U.S.C. §13 et seq.), and the foreign Corrupt Practices act of 1977 (15 U.S.C. §§78dd-1 and 78dd-2). Plaintiffs allege that jurisdiction and venue are vested in this court by Title 28 U.S.C. §1337 and Title 15 U.S.C. §§15, 22, 26 and 31.

Although plaintiffs have filed no written motion to certify this matter as a class action, pursuant to FRCP 23(a) and (b), within the body of their complaint, plaintiffs state that they bring this action on their own behalf and that of all burley tobacco growers in eight central Kentucky counties (Scott, Madison, Jessamine, Bourbon, Fayette, Mercer, Clark, and Woodford) within the Eastern District of Kentucky, who have sold burley tobacco within the past six (6) years.

Plaintiffs state that the amount of their injury is unknown; however, they seek, inter alia, treble damages of $60 Million, injunctive relief, and an order barring the defendants from using the Panama Canal.

This matter is before the court on the motions of defendants Phillip Morris, Inc. ("Phillip Morris") and B.A.T. Industries, PLC ("B.A.T.") to dismiss this action. While defendants Phillip Morris and B.A.T. have

advanced some common resons for dismissal, B.A.T. also submits reasons for dismissal that are independent of the grounds for dismissal urged by Phillip Morris. These pending motions to dismiss have been fully briefed, heard in open court, and are ripe for consideration.

II. OPERATIVE FACTS

Plaintiffs generally allege that on or about May 14, 1982, subsidiaries of defendants herein entered into a contract in Venezuela which violated the foregoing antitrust laws of the United States. More specifically, plaintiffs allege that C.A. Tabacalera National ("CATANA"), a subsidiary of Phillip MOrris, and C.A. Cagarrera Bigott, SUCS, ("Bigott"), a subsidiary of B.A.T., entered into a contract with La Fundacion Del Nino (Children's Foundation) of Caracas, Venezuela (ostensibly a private charitable organization that engages in educational and other philanthropic activities on behalf of

children who live in the tobacco-growing regions in Venezuela and is headed by the wife of the then president of Venezuela), which provided that these two subsidiaries would make periodic "donations" in the amount of approximately $12.5 Million to the Children's Foundation in exchange for the following consideration by the government of Venezuela: (1) price controls on tobacco grown in Venezuela; (2) no price controls concerning the retail prices the tobacco companies could charge for cigarettes; (3) the amount of the "donations" made to the Children's Foundation would be deductible from the gross income of the tobacco companies; and (4) the tax rates in effect at the time the tobacco companies entered into this contract with the Children's Foundation (May 14, 1982) would remain unchanged. Plaintiffs allege that this agreement between these tobacco companies and the Children's Foundation violated the antitrust laws of the United States because it had an adverse impact on plaintiffs' ability to sell

their burley tobacco on the tobacco markets in central Kentucky.

In sum, the gravamen of the complaint is that by virtue of the tobacco companies' contract with the Children's Foundation in Venezuela, the defendants were able to meet their demand for tobacco by importing increased quantities of less expensive tobacco from Venezuela, thereby reducing the amount of domestic tobacco purchased by the defendants, such as the burley tobacco grown by the plaintiffs, which, due to this decreased demand, ultimately had the effect of lowering the price plaintiffs could obtain for their tobacco on the tobacco markets in central Kentucky.

III. THE MOTIONS TO DISMISS

A. Phillip Morris

Defendant Phillip Morris has moved to dismiss this action for the following reasons: (1) the complaint is barred by the "act of state" doctrine; (2) there is no subject matter jurisdiction; (3) plaintiffs lack standing to

maintain this action; (4) the complaint fails to state a claim for which relief can be granted under the Noerr-Pennington doctrine, and (5) the complaint violates the pleading requirements of Rules 8 and 9 of the Federal Rules of Civil Procedure.

B. B.A.T. Industries, Inc.

Defendant B.A.T. has moved to dismiss this action for the following reasons: (1) lack of subject matter jurisdiction; (2) lack of personal jurisdiction over it; (3) improper venue; and (4) the complaint fails to state a claim for which relief can be granted. Additionally, in connection with its contention that the complaint should be dismissed for lack of personal jurisdiction, B.A.T. has also moved to quash service of process on it.

IV. APPLICABLE LAW

A. The "Act of State" Doctrine

The court shall begin its analysis of this motion to dismiss by reviewing the act of

state doctrine. Plaintiffs allege that defendants violated the antitrust laws by inducing the Children's Foundation to induce in turn the Venezuelan government to adopt the foregoing price controls on its tobacco. Defendants assert that even assuming the truth of this allegation, this claim is barred by the act of state doctrine. The history of this doctrine is found in Kalamazoo Spice Extraction Co. v. The Provisional Military Government of Socialist Ethopia, 729 F.2d 422 (6th Cir. 1984), as follows:

> The act of state doctrine is an exception to the general rule that a court of the United States, where appropriate jurisdictional standards are met, will decide cases before it by choosing the rules appropriate for decision from among various sources of law, including international law. First National City v. Banco Nacional de Cuba, 406 U.S. 759, 763, 92 S.Ct. 1808, 1811, 32 L.Ed.2d 466 (1972). The roots of the doctrine can be traced to Underhill v. Hernandez, 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897) where the Supreme Court held:
>
> > Every Sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the

> government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through means open to be availed of by sovereign powers as between themselves.
>
> Thus, the Supreme Court's decision in Underhill was a recognition that generally the courts of one nation will not sit in judgment on the acts of another nation when those acts occur within the latter's borders.

Kalamazoo, 729 F.2d at 424.

This doctrine was revisited in Hunt v. Mobil Oil Corp., 550 F.2d 68 (2nd Cir. 1977). Hunt, an independent oil company, brought an action against the seven major oil companies for their alleged violations of the Sherman Antitrust Act and the Wilson Tariff Act after Hunt's oil-producing properties were nationalized by Libya on June 11, 1973. Hunt's theory was that the defendants combined and conspired to preserve the competitive advantage of Persian Gulf crude oil over that of Libyan crude oil, which prevented him from successfully dealing with the Libyan government, which ultimately resulted in his oil-producing properties being

confiscated and nationalized by Libya.

In relying on the act of state doctrine, the district court dismissed one of the conspiracy counts. On appeal, the Second Circuit traced the history of this doctrine and held that Hunt's claim was non-justiciable, as follows:

> ...We conclude that the political act complained of here was clearly within the act of state doctrine and that since the disputed pleadings inevitably call for a judgment on the sovereign acts of Libya the claim is non-justiciable.

Hunt, 550 F.2d at 73.

In reaching this conclusion, the Hunt court reviewed how the doctrine had changed sinced its inception in Underhill. The Hunt court noted that the district court relied heavily on American Banana v. United Fruit Co., 213 U.S. 347 (1909), wherein the plaintiff sued for treble damages under the Sherman Act, alleging that his banana plantation had been confiscated by the Costa Rican government, which had acted at the defendant's instigation

in furtherance of anti-competitive behavior. The American Banana Court held that since the seized plantation was within the de facto jurisdiction of Costa Rica, its seizure by that state was an act of sovereign power which would not be litigated in a court in the United States.

American Banana also held that because the acts complained of occurred outside of the United States, they were beyond the jurisdictional scope of the Sherman Act. This portion of American Banana has since been eroded by Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690 (1962); However, the Hunt court held that neither Continental Ore nor United States v. Sisal Sales Corp., 274 U.S. 268 (1927), sought to discard entirely the act of state doctrine on which American Banana rests.

The Second Circuit also considered Hunt's contention that the act of state doctrine was not applicable because he did not challenge the actions of the Libyan government; instead,

he was only challenging the defendants' alleged unlawful actions which he asserted brought about the nationalization of his oil properties. In analyzing this argument, the Hunt court noted the following:

> Hunt's complaint does not name Libya as a defendant or in any way suggest that it is a co-conspirator of the named defendants. Nonetheless Judge Weinfeld reasoned that the combination or conspiracy charged did not of itself cause the damage complained of but rather that the damage resulted from the action of Libya in cutting back Hunt's production, shutting off its oil and finally nationalizing its properties. Thus he found that Hunt would be required to establish that but for the conspiracy Libya would not have committed any of these aggressive actions. This he decided would require judicial inquiry into "acts and conduct of Libyan officials, Libyan affairs and Libyan policies with respect to plaintiff's as well as other oil producers and the underlying reasons for the Libyan government's actions." 410 F.Supp. at 24. He concluded that this inquiry was foreclosed under the act of state doctrine.

Hunt, 550 F.2d at 72. In rejecting Hunt's argument that the act of state doctrine was not applicable, the Hunt court stated, as follows:

> ...It is well established that a private plaintiff who seeks damages in an antitrust action must allege and establish that his business or property was injured as a direct result of the Sherman Act violation. Radiant Burners, Inc. v. Peoples Gas Light & Coke Co., 364 U.S. 656, 660, 81 S.Ct. 365, 5 L.Ed.2d 358 (1961); Salerno v. American League of Professional Baseball Clubs, 429 F2d 1003, 1004 (2d Cir. 1970), cert. denied, 400 U.S. 1001, 91 S.Ct. 462, 27 L.Ed.2d 452 (1971).
>
> Appellants do not deny, as they cannot, this proposition of law. Instead they argue that while Hunt must prove a causal connection between Libya's nationalization and the conspiracy charged this has been sufficiently pleaded and somehow shields the third claim from dismissal prior to trial. However, appellants admit that antitrust liability cannot be attributed to the defendants unless Hunt can prove that but for their combination or conspiracy Libya would not have moved against it. Since this nexus is at the heart of the claim we do not understand how Judge Weinfeld could have erred in anticipating that the doctrine of act of state was inescapably raised by the pleadings and thus was a major issue appropriately considered on the motion to dismiss.

Hunt, 550 F.2d at 76.

In affirming the trial court's dismissal of this conspiracy count, the Hunt court also looked to the following teachings:

Mr. Justice Harlan, in analyzing the act of state doctrine in Banco Nacional de Cuba v. Sabbatino, supra, 376 U.S. at 423, 84 S.Ct. at 938, observed:

> It arises out of the basic relationships between branches of government in a system of separation of powers. It concerns the competency of dissimilar institutions to make and implement particular kinds of decisions in the area of international relations. The doctrine as formulated in past decisions expresses the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder rather than further this country's pursuit of goals both for itself and for the community of nations as a whole in the international sphere.

The Dunhill majority has reiterated this view:

> The major underpinning of the act of state doctrine is the policy of foreclosing court adjudications involving the legality of acts of foreign states on their own soil that might embarrass the Executive Branch of our Government in the conduct of our foreign relations.

Alfred Dunhill of London v. Republic of Cuba, supra, 96 S.Ct. at 1863.

Hunt, 550 F2d at 77.

Defendant Phillip Morris also submits that the present action is controlled by

Occidental Petroleum Corp. v. Buttes Gas & Lil Co., 331 F.Supp. 92 (C.D. Cal. 1971), aff'd., 461 F.2d 1261 (9th Cir. 1972), cert. denied, 409 U.S. 950 (1972), wherein the plaintiffs alleged that the defendants had incited the governments of Sharjah, Iran, and Great Britian to interfere with the plaintiffs' oil concession off the coast of the Trucial States. Plaintiffs asserted that the act of state doctrine was not applicable because they were not attacking the validity of the acts of these foreign governments, but rather only the "defendants' conduct in 'catalyzing' those acts." 331 F.Supp. at 110. The Occidental court found no merit in this argument, as follows:

> ...Because a private antitrust claim requires proof of damage resulting from forbidden conduct, (citations omitted) plaintiffs necessarily ask this court to "sit in judgment" upon the sovereign acts pleaded, whether or not the countries involved are considered co-conspirators. That is, to establish their claim as pleaded plaintiffs must prove, inter alia, that Sharjah issued a fraudulent territorial waters decree, and that Iran laid claim to the island

> of Abu Musa at the behest of the defendants. Plaintiffs say they stand ready to prove the former allegation by use of "internal documents." But such inquiries by this court into the authenticity and motivation of the acts of foreign sovereigns would be the very sources of diplomatic friction and complication that the act of state doctrine aims to avert.

Id.

The Hunt plaintiffs also argued that the act of state doctrine was not applicable because (1) they were not questioning the validity of the acts of the foreign government and (2) the foreign government was not a named defendant. However, the Hunt court, just like the Occidental court, found this position untenable.

Additionally, Phillip Morris relies on Clayco Petroleum Corp. v. Occidental Petroleum Corp., 712 F2d 404 (9tn Cir. 1983), cert. denied, 464 U.S. 1040 (1984), wherein plaintiff alleged that Occidental had violated the antiturst laws by bribing the officials of Umm Al Qaywayn to secure an off-shore oil concession. In affirming the trial court's dismissal of the

action based on the act of state doctrine, the Ninth Circuit noted the potential for interference with our foreign relations if plaintiffs' claim were to be adjudicated, as follows:

> ...In this case however, the very existence of plaintiffs' claim depends upon establishing that the motivation for the sovereign act was bribery, thus embarrassment would result from adjudication.
>
> This circuit's decisions have similarly limited inquiry which would "impugn or question the nobility of a foreign nations' motivation." Timberland, 549 F.2d at 607. In Buttes, the trial court, in an opinion adopted by this court, held judicial scrutiny of the motivation for foreign sovereign acts to be precluded by the act of state doctrine, noting that it has traditionally barred antitrust claims based on the defendant's alleged inducement of foreign sovereign action. 333 F.Supp. at 110 (citing American Banana Co. v. United Fruit, 213 U.S. 347, 29 S.Ct. 511, 53 L.Ed. 826 (1909)

Clayco, 712 F.2d at 407-408.

DISCUSSION

In analyzing the merits of the action sub judice, the court is guided by the

teachings of Hunt v. Mobil Oil Corp., supra, Occidental Petroleum Corp. v. Buttes Gas & Oil Co., supra, and Clayco Petroleum Corp. v. Occidental Petroleum Corp., supra. The elements common to all three of these cases are that (1) the plaintiffs were not questioning the validity of the acts of the foreign government, and (2) the foreign government was not a named defendant. In each of these actions, the court declined to inquire into the respective acts of these foreign governments, relying on the act of state doctrine.

As in Hunt, Occidental Petroleum, and Clayco, plaintiffs herein ask this court to examine a policy decision of a foreign sovereign (i.e., the decision of the Venezuelan government to impose price controls on tobacco). The Clayco court noted that the reasons that the government officials of Umm Al Qaywayn awarded the off-shore oil concession to Occidental Petroleum were not merely the background of that action, but rather they were the core of

plaintiffs' claim. The same rationale applies to the present action. The actions of the Venezuelan government in imposing price controls on tobacco are not merely the backdrop of this case, they are the foundation of this action. Plaintiffs herein would not have filed this action had Venezuela not imposed price controls on tobacco.

Therefore, the court is of the opinion that based on controlling precedent, the act of state doctrine bars this court from inquiring into the reasons underlying the decision of the government of Venezuela to impose price controls on tobacco grown in Venezuela.

B. The Foreign Corrupt Practices ACt of 1977

Plaintiffs' complaint has been amended to add a claim that defendants' actions violated the Foreign Corrupt Practices Act of 1977 (FCPA). Both defendants submit that the amended complaint notwithstanding, this action should still be dismissed. Defendants contend that a private party is not authorized to bring an action

under FCPA and that only the government is authorized to seek redress for violations of the FCPA. The remedies for violations thereof are fines imposed after one is convicted in a criminal proceedings. Additionally, the FCPA provides that the United States Attorney General may bring a civil action to enjoin violations.

In short, the gist of defendants' argument is that a private party has no standing to bring a claim under the FCPA. This position is borne out by the Ninth Circuit's explanation of this act in Clayco Petroleum Corp. v. Occidental Petroleum Corp., supra, as follows:

> The FCPA prohibits bribery of a foreign official for the purpose of obtaining or retaining business. 15 U.S.C. §§78dd-1, 78dd-2. The Act provides for severe criminal penalties including fines and imprisonment. 15 U.S.C. §§ 78dd-2(b), 78ff. In addition, the Attorney General may bring a civil action to enjoin impending violations. 15 U.S.C. §78dd-2(c).

Clayco, 712 F.2d at 408.

The Clayco court further elaborated that:

> The Justice Department and the SEC share enforcement responsibilities

> under the FCPA. They coordinate enforcement of the Act with the State Department, recognizing the potential foreign policy problems of these actions.

Clayco, 712 F.2d at 409.

In the final analysis, the Clayco court concluded, as follows:

> Here, however, we are faced with a private lawsuit, rather than a public enforcement action. It is the screening of governmental proceedings, with State Department consultation, which distinguishes FCPA enforcement from private suits.

Id.

DISCUSSION

Although plaintiffs contend that the issue of whether a private plaintiff can bring a cause of action under the FCPA is an open question, Clayco teaches otherwise. It is crystal clear from Clayco that an action under the FCPA can only be maintained by the government. In terms of criminal proceedings, the Justice Department and the Securities and Exchange Commission share enforcement responsibilities of the FCPA; additionally, the Attorney General can bring a civil action to enjoin violations

of the FCPA. Accordingly, the court must conclude that plaintiffs have no standing to bring this action under the FCPA.

In rebutting defendants' motions to dismiss this action based on the act of state doctrine, plaintiffs refer the court to Timberline Lumber Co. v. Bank of America, N.T. & S.A., 549 F.2d 597 (9th Cir. 1977), International Association of Machinists v. OPEC, 649 F.2d 1354 (9th Cir. 1981), and Williams v. Curtiss-Wright Corp., 694 F.2d 300 (3rd Cir. 1982), which plaintiffs assert are "three recent seminal cases" on the act of state doctrine.

The court can only address this contention by observing that both Clayco, supra (a 1983 9th Circuit case), and Kalamazoo Spice, supra (a 1984 6th Circuit case), were rendered subsequent to the foregoing authorities relied on by plaintiffs. In fact, the primary authority of Kalamazoo Spice seems to be the last word from the Sixth Circuit on the act of state doctrine.

Therefore, the court finds no merit in plaintiffs' argument that the act of state doctrine should not apply to this action.

C. The Foreign Trade Antitrust Improvements Act of 1982

Due to the fact that this act was passed on October 8, 1982, subsequent to May 14, 1982, the date the contract about which plaintiffs complain was executed, the parties are in disagreement as to whether this act is applicable to this action. Plaintiffs maintain that it should not be given retroactive application, and the defendants argue that the act is applicable herein because it merely clarified existing law.

However, inasmuch as the court has determined that this action is barred by the act of state doctrine and the Foreign Corrupt Practices Act of 1977, the court need not address this issue or any other remaining issues.

CONCLUSION

In light of the foregoing authorities, the court must conclude that this action is barred by the act of state doctrine. Plaintiffs want this court to scrutinize the policy decision of Venezuela to impose price controls on its domestic tobacco; however, inquiry into such a policy decision is exactly what the act of state doctrine was designed to prevent.

Furthermore, a private plaintiff has no standing to bring this action under the Foreign Corrupt Practices Act of 1977.

An Order and Judgment in accordance with this Memorandum Opinion will be entered on the same date herewith.

This 28th day of June, 1989.

SCOTT REED, SENIOR JUDGE

Copies to:
John Lackey
Robert Watt III
Abe Krash
James Park

APPENDIX III

[¶ 81,701] Opinion of Office of the General Counsel on the Existence of a Private Right of Action Under the Foreign Corrupt Practices Act of 1977.

Letter from Frederick B. Wade, Special Counsel, Office of the General Counsel to Mr. Raymond Garcia, Emergency Committee for American Trade, Washington, D.C. May 16, 1978. Opinion of Special Counsel in full text.

Foreign Corrupt Practices Act - Private Right of Action. - "Private enforcement" of the Foreign Corrupt Practices Act would provide "a necessary supplement" to enforcement actions brought by either the SEC or the Department of Justice and the implication of a private right of action under the Act would be appropriate, in the view of Special Counsel for the SEC's Office of General Counsel.

See ¶ 23,631, "Exchange Act - Registration Reports" division, Volume 2.

[Opinion of Counsel]

This is in response to your letter, dated March 2, 1978, concerning the Commission's release, entitled "Notification of Enactment of Foreign Corrupt Practices Act of 1977."[1] Your letter questions a portion of the release, which states:

> "The legislative history of the Act ***contemplates that private rights of action properly could be implied under the Act on behalf of persons who suffer injury as a result of prohibited corporate bribery."

Whether there should be an implied private right of action under the Foreign Corrupt Practices Act, of course, is ultimately a question that the courts will decide. The determination of that question will require a comprehensive review of the legislative history of the Act, and a consideration of

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[1] Securities Exchange Act Release No. 14478 (Feb. 16, 1978); 14 SEC Docket 180 (Feb. 28, 1978); 43 Fed. Reg. 7752 (Feb. 24, 1978).

the applicable rules of law governing the weight that courts may give to various sources of legislative history.

It is significant, in this regard, that a bill introduced by Senator Frank Church during the 94th Congress, S. 3379, "included two provisions creating new private rights of action for persons injured by the payment of bribes."[2] One of those provisions, which would have created an express right of action on behalf of shareholders, was deleted because the Senate Committee on Banking, Housing and Urban Affiars believed the proposal "would have duplicated and possibly confused existing remedies available to shareholders."[3]

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[2] S. Rep. No. 94-1031, 94th Cong., 2d Sess. 12 (1976).

[3] Id. at 12-13. The use of the word, "duplicated," is a strong indication that the Committee believed it was unnecessary expressly to provide for a private right of action on behalf of shareholders.

The Committee also "found merit" in the second provision, which would have created an express "private cause of action for any person who could establish actual damage to his business resulting from illegal payments made by a competitor," but deleted that proposal on the ground that, as drafted, it "created ambiguities."[4] The Committee added that its decisions were not intended to have "any effect on existing law concerning private causes of action under the present federal securities laws,"[5] under which the courts had provided for implied causes of action under a number of statutory provisions.

An implied private right of action was advocated, prior to enactment of the legislation, during the hearings held by the Subcommittee on Consumer Protection and Finance of the House Committee on Interstate and Foreign

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[4] Id. at 13.

[5] Id.

Commerce.[6] In this regard, the Association of the Bar of the City of New York submitted a report to the Subcommittee stating the Association's view that the legislation, if enacted, would be available to "private plaintiffs in implicit actions * * *."[7] In addition, the Chairman of the Commission, Harold M. Williams, declared both in his testimony,[8] and in his prepared statement,[9] that "this legislation would furnish the Commission and private plaintiffs * * * with potent new tools to employ against those who persist in concealing from the investing public

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[6] See Subcommittee on Consumer Protection and Finance of the House Committee on Interstate and Foreign Commerce, Hearings Concerning the Unlawful Corporate Payments Act of 1977, 95th Cong., 1st Sess. (1977).

[7] Id. at 88.

[8] Id. at 198.

[9] Id. at 219.

the manner in which corporate funds have been utilized" (emphasis supplied).[10] Thereafter, the House report concerning the proposed legislation (H.R. 3815) stated.

> "The Committee intends that the courts shall recognize a private cause of action based on this legislation, as they have in cases involving other provisions of the Securities Exchange Act, on behalf of persons who suffer injury as a result of prohibited corporate bribery. The recognition of such a private cause would enhance the deterrent effect of this legislation and provide a necessary supplement to the enforcement efforts of the Commission and the Department of Justice.[11]

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[10] In this regard, the Supreme Court has recognized that the views of an administrative agency are entitled to particular weight where, as here, "the administrators participated in drafting [the legislation] and directly made known their views to Congress in committee hearings." Zuber v. Allen, 396 U.S. 168, 192 (1969); See United States v. American Trucking Associations, Inc., 310 U.S. 534, 549 (1940).

[11] H.R. Rep. No. 95-640, 95th Cong., 1st Sess. 10 (1977). The word, "persons," is broad enough to encompass an implied cause of action on behalf of both shareholders and competitors of the corporation that may suffer injury as a result of prohibited corporate bribery.

The Report of the Conference Committee, which was established to reconcile the differences between the House and Senate versions of the legislation, indicates that the prohibitations against foreign corporate bribery contained in the Foreign Corrupt Practices Act consist, for the most part, of "the identical provisions of both * *" the Senate and House bills.[12] None of the changes agreed to by the members of the Conference Committee reflect any disagreement with the position of the House that there should be an implied private right of action.[13] Accordingly, the failure of the Conference Committee either to address this issue, or explicitly to retract the statement contained in the House Report, is a strong indication that that statement reflects the intent of the Congress concerning private rights of action.

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[12] H.R. Rep. No. 95-831, 95th Cong., 1st Sess. 11-13 (1977).

[13] Id.

Your letter quotes Senator John G. Tower and Congressman Samuel L. Devine as stating, in substance, that the Conference Committee did not intend to create an implied private right of action. Although Senator Tower and Congressman Devine were both members of the Conference Committee, the probative value of their statements is diminished, in my view, by the fact that they did not persuade the conferees to reflect their views in the Conference Report. In fact, the statement of Senator Tower makes clear that neither he, nor any other member of the Conference Committee, raised the question with the other conferees, despite their opportunity to do so. He states, in this regard, that that "question was not considered * * * during the conference * * *." Thus, there is nothing to indicate that the statements of Senator Tower and Congressman Devine reflect anything more than their own personal views.

The commission's view that private rights of action are contemplated by the Foreign Corrupt Practices Act also finds support in a number of Supreme Court decisions concerning the weight to be given to various sources of legislative history. It has long been established, for example, that congressional debates, prior to the passage of legislation, are "not entitled to the same weight as * * * carefully considered committee reports * * *."[14] In addition, it is a settled rule of statutory construction that "[i]t is the sponsors [of legislation] that * * * [the courts] look to when the meaning of the statutory words is in doubt."[15]

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[14] See, e.G. United States v. United Auto Workers, 352 U.S. 567, 585-586, rehearing denied, 353 U.S. 943 (1957); see also United States v. Wrightwood Dairy Co., 315 U.S. 110, 125 (1942).

[15] See, e.g., National Labor Relations Board v. Fruit & Vegetable Packers & Warehousemen, 377 U.S. 58, 66 (1964).

And, it bears emphasis, in this context, that the Supreme Court has declared that legislators with minority views "cannot put words into the months of the majority and thus, indirectly, amend a bill."[16]

Neither Senator Tower nor Congressman Devine were sponsors of the proposed bills that were reported by the committees of the Senate and the House responsible for consideration of the legislation. In fact, Congressman Devine joined in a minority report concerning the House version of the bill that expressed strong opposition to certain features of the measure, including the approach that the majority of the Committee had adopted with re-

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[16] Mastro Plastics Corp. v. National Labor Relations Board, 350 U.S. 270, 288, rehearing denied, 351 U.S. 980 (1956).